
IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

NUTRACEUTICAL CORPORATION, et al.,

Plaintiffs,

vs.

LESTER CRAWFORD, DVM, Acting
Commissioner of the U.S. Food and Drug
Administration, et al.,

Defendants.

ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS
AND ORDERING STATUS REPORT

Case No. 2:04-cv-00409

This matter has been transferred to the undersigned judge. As instructed by the United States Court of Appeals for the Tenth Circuit,¹ the court withdraws its entry of summary judgment for the plaintiffs and enters summary judgment for the defendants.

Because two of the plaintiffs' causes of action survive the Tenth Circuit's mandate, the court orders the parties to file a joint status report within 30 days of the date of this order. In this report, the parties shall submit a proposed briefing schedule for the filing of dispositive motions on the remaining issues in this case. This schedule shall have all motions further briefed and

¹See *Nutraceutical Corp. v. Von Eschenbach*, 459 F.3d 1033, 1043–44 (10th Cir. 2006).

ready for decision by the court by March 2, 2007.

The court takes note of the plaintiffs' request to delay further action in this case until the United States Supreme Court rules on the plaintiffs' petition for a writ of certiorari. However, the Supreme Court grants only a tiny percentage of such petitions. Moreover, nothing in the Tenth Circuit's unanimous decision suggests a "Circuit split" or other grounds for the Court to exercise its discretionary certiorari power. Finally, plaintiffs' motion to this court does not explain what "cert-worthy" question they are planning to present to the Supreme Court. In light of all this, it is inadvisable to delay further proceedings in this case based on such a remote contingency. The court, therefore, DENIES the plaintiffs' motion [#39], in part. The parties must submit a joint status report to the court within 30 days.

DATED this 14 day of November, 2006.

BY THE COURT:



Paul G. Cassell
United States District Judge